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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,835	10/30/2003	Merrie Martin	88265-14036	7200

28765 7590 03/21/2005

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,835

Applicant(s)

MARTIN, MERRIE

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The 112 second paragraph rejection of claim 1 and 10 is hereby withdrawn.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drantch et al for the same reason set forth in the previous office action.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaschke et al for the same reason set forth in the previous office action.

In the response filed 12/20/04, applicant argues Drantch clearly discloses that its edible doughs can be held and shaped by hand and that the dough must be preformed in a baking tray. This argument is not persuasive. The disclosure of the dough being held and shaped by hand does not in any way indicate that the dough has to be manipulated or formed or shaped before it is placed in the pan and baked. The claimed dough can be held and shaped by hand because claim 1 recites " the dough having sufficient firmness to be handled". The disclosure in Drantch that clearly teaches the dough is placed directly in a baking pan without further manipulation is found in column 11 lines 21-25 where Drantch discloses " the present doughs are conveniently prepared into finished baked goods by simple addition to a suitable baking container or pan and baking to form a finished baked good". There is no disclosure of forming or shaping. The disclosure on column 12 pointed by applicant refers to the packaging of the dough. Applicant further argues cookies are generally prepared by spooning and dropping small portions of cookie dough; thus, there is no motivation to form a bar. Cookie bars are notoriously well known in the art. One only has to look in a bakery to see such cookie bar. In response to applicant argument, a page from the cookbook " Best Cookies " is submitted along with this office action to show that bar cookies are well

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known. It would have been within the skill of one in the art to make bar cookie when such configuration is wanted.

With respect to the Blaschke reference, applicant argues the Blaschke et al teach breaking into pieces before baking and the position taken in the office action to bake the entire block is based on improper hindsight reconstruction. This argument is not persuasive. The grooves in the Blaschke et al dough is to facilitate breaking of the block into pieces. The function of the groove remains the same whether the block is baked first or baked after the block is broken into pieces. The selection of breaking into pieces before or after baking is generally dictated by the number of pieces wanted. For example, if only one or two pieces are wanted, it would have been obvious to break the pieces before baking. However, if all the pieces are wanted, it would have been obvious to break the pieces after baking because a cooked dough is easier to manage than a raw refrigerated dough. Applicant argues this is hindsight; however, it is not hindsight. Rather, it is a logical reasoning that would be well within the skill of one in the art.

Applicant also submits a 132 declaration to show that the claimed method is not obvious. The declaration is not found to be persuasive. The declaration does not have any comparative showing or data to show unexpected result. With respect to the Drantch reference, the declaration makes the same statements as argued by applicant above. These statements are not found to be persuasive for the same reason set forth above. With respect to the Blaschke reference, the declaration states that the baking of the entire block results in a chewier center than expected of separately baked pieces.

This statement is not supported by factual evidence. Furthermore, the baking of the block would have been within the skill of one in the art as set forth above. The declaration does not have any evidence to show why it would not have been obvious to bake the Blaschke et dough in a block form. A conclusion does not equate to evidence.

Applicant's arguments filed 12/20/04 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 15, 2005

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700